In the Matter of Arbitration between		OPINION AND AWARD New York Dock Labor Protective Conditions Article I, Section 11
United Transportation Union (Sacramento Northern)	)	
-and-	)	
Union Pacific Railroad Company	)	Claims of H. Miller, G. Jennings and W. Smith

The undersigned, Charles M. Rehmus, was selected by the parties to serve as neutral referee to resolve these claims. The parties waived their right to appoint members to the Section 11 arbitration committee.

The parties exchanged pre-hearing briefs which were received by July 11, 1987. Hearing was held in San Francisco, CA on July 17, 1987.

Appearing for the Union:

Norman J. Lucas, General Chairman, UTU/SN
John Easley, Vice President, UTU

Appearing for the Carrier:

John E. Cook, Director, Labor Relations
J. R. Gum, Assistant Director, Labor Relations
Dennis J. Gonzales, Senior Manager, Labor Relations

The record was closed at the conclusion of the hearing.

Claim of H. W. Miller

Brakeman H. W. Miller is a prior rights SN trainman under Referee Phipps' Western Pacific-Sacramento Northern Coordination Award of March 1, 1985. He also is entitled to the labor protective conditions of New York Dock in accordance with this referee's award of February 14, 1986. The issue here is his request that his displacement allowance be recalculated based upon the 12-month period immediately prior to February 11, 1986, the date on which his earnings were first adversely affected by an ICC-authorized transaction.

In my earlier award of February 14, 1986, I found that, aside from the Coordination Award itself, there were three specific WP-SN coordination transactions that the Carrier implemented during April and May of 1985. Prior to these transactions Brakeman Miller held the SN combined road-yard assignment in Sacramento designated S-401, with a daily guarantee of 8 hours' pay at yard rates.

On May 20, 1985, S-401 was abolished and was replaced by a comingled road switcher assignment, LW-63. This was the third of the three transactions referred to in the paragraph above. Brakeman Miller then exercised his seniority to obtain the second brakeman position on LW-63. This assignment carried a daily guarantee of 10 hours at road switcher rates. Hence Brakeman Miller's daily earnings immediately increased significantly and he filed no request for labor protective conditions.

Under the terms of the Coordination Award, however, the

parties were required to pro-rate jobs on comingled assignments. The second brakeman's job on LW-63, by agreement of the parties, became a 6-months prior rights SN and 6-months prior rights WP assignment. On February 11, 1986, Brakeman Miller was therefore replaced by a prior rights WP brakeman. Miller then filed for labor protective conditions. This request was granted, and the Carrier calculated his displacement allowance based upon his earnings in the 12 months immediately prior to May 20, 1985, the date on which he was displaced from his assignment on S-401 as the result of the LW-63 transaction. Miller contests this, and requests that his allowance be calculated based on his higher earnings in the 12 months prior to February 11, 1986, the date on which his earnings were first adversely affected. The difference in Miller's displacement allowance between his and the Carrier's 12-month period is nearly $500 per month (Un.Ex.2)

Since Miller's right to a displacement allowance arises under the ICC's New York Dock Conditions these Conditions must be relied upon to resolve this disagreement. Miller is clearly an employee who was displaced by an ICC-authorized "transaction" as that term is defined in 1.(a) of New York Dock. As noted above, the initial "transaction" that displaced him took place on May 20, 1985. The problem arises here, however, because "displaced employee" is defined in 1.(b) of New York Dock as one "...who as the result of a transaction is placed in a worse position with respect to his compensation..." The Union argues Miller was not worse off financially until February 11, 1986, and

hence that date, not the previous May 20, should be the terminal point of his 12-month calculation.

In support of this argument the Union cites another New York Dock decision of June 12, 1986, with Referee William Fredenberger, Jr., also involving the Union Pacific and the UTU (Un.Ex.11). There it was found that a transfer of jobs on a combined local from Union Pacific to Missouri Pacific employees pursuant to an implementing agreement was a transaction for New York Dock purposes. The circumstances present there were quite different from those at hand, however. In that case the Union Pacific employees worked the same jobs on the same local for five months after the consolidation that they had worked prior to it and even though all of them had previously been afforded New York Dock protection. They first became displaced five months after the consolidation. The Carrier, however, then denied their claim for a displacement allowance. That Board was persuaded that the UP employees' initial displacement, although it took place five months after the consolidation of the locals, had adverse effects upon them and was a transaction giving rise to protective benefits. That decision is silent regarding the date for calculation of displacement allowances.

Brakeman Miller's situation here was quite different, even though both cases involve displacement resulting from proration agreements. Miller was displaced from his job in the Westside Sacramento Yard as the result of a transaction that took place in May, 1985. He was nevertheless able to exercise his seniority to

go to a job with a longer hours guarantee for the next six months. He then lost this second job as a result of a proration agreement. Hence the initial "transaction" that caused Miller to become a "displaced employee" took place on May 20, 1985. Miller's increased earnings thereafter must have resulted in major part from the fact that after displacement he worked a job with a 10-hour rather than an 8-hour guarantee. An individual who earns more because he works longer hours could well be argued to be in "...a worse position with respect to his compensation..." even though his total monthly earnings become greater.

The specific terms of the New York Dock Conditions reinforce this practical thought. Section 1.(d) states that an employee's "protective period" means the time which "...extends from the date on which an employee is displaced..." Miller's ICC-authorized displacement occurred on May 20, 1985. His displacement from his subsequent job on LW-63 came about as the result of the parties' proration agreement, but the transaction that led to his becoming a displaced employee took place six months earlier.

Finally, Section 5 of New York Dock defines "displacement allowance" as an entitlement resulting after displacement, but one which becomes effective when an employee can no longer exercise seniority "...to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced..." Again, Miller was displaced on May 20, 1985. But for the next 6 months he obatined a position providing equal or greater compensation. When he

could no longer do so after February 11, 1986, his monthly displacement allowance entitlement came into effect. But the effective date for its calculation, again quoting Section 5, was the last 12 months "...immediately preceding the date of his displacement as a result of a transaction..." This is the way the Carrier calculated it, and that action conforms to the specific terms of New York Dock.

Claim of G. F. Jennings

The claim of Brakeman G. F. Jennings is in many ways identical to that of Brakeman Miller and thus much repetition can be avoided. Jennings held the SN extra board in Sacramento prior to July 6, 1985. After that date he exercised his seniority to the job of second brakeman on LW-67, a co-mingled road switcher assignment out of the Oroville terminal established as the result of the SN-WP coordination. It was the second ICC-authorized transaction the Carrier implemented. LW-67 also carried a 10-hour guarantee so Jennings, like Miller, found his daily and monthly earnings increased. But on February 12, 1986, as the result of Miller's displacement from LW-63, he bumped Jennings from LW-67 in Oroville. Now Jennings for the first time subsequent to his original displacement found his earnings decreased and asked for a displacement allowance. Similarly to Miller, Jennings contests the Carrier's calculation of his displacement allowance from May 21, 1985, the date of the first steel train transaction which in time displaced him from the Sacramento extra

board. The Union asks instead that Jennings' 12-month period be calculated from February 11, 1986, the date he was bumped by Miller.

All of the previous discussion of New York Dock as it relates to the claim of Brakeman Miller applies with equal relevance to Brakeman Jennings' claim. The specific ICC-authorized transaction that resulted in Jennings becoming a displaced employee took place in May, 1985, rather than the bumping consequential upon the proration agreement that resulted in his second displacement of February, 1986. Hence the Carrier properly calculated his monthly displacement allowance based on his 12-month earnings prior to the displacement transactions that took place in May of 1985. Like Miller, that was the month in which Jennings became a "displaced employee" and thereby entitled to protection. This is the date on which New York Dock says his protective period begins and from which it is calculated. The fact that Jennings, like Miller, was not adversely affected in terms of total monthly earnings until six months later does not change the date of his protective period calculation.

Claim of W. A. Smith

In May, 1983, the Carrier served notice on General Chairman M. A. Mitchell of the Brotherhood of Locomotive Engineers of its intent to coordinate engineers' work on the Sacramento Northern with that on the Western Pacific. Nearly a year later, in the

winter of 1984, BLE General Chairman Mitchell entered into a negotiated implementation agreement with the Carrier. Pursuant to this agreement, in April of 1985, the Sacramento Northern engineers' extra board in Sacramento was abolished and was replaced with a consolidated extra board in Stockton.

The claimant here, Engineer W. A. Smith, under the BLE implementing agreement retained prior rights to former SN work but also was placed at the bottom of the WP engineers' seniority roster. Also pursuant to the engineers' implementing agreement, Smith transferred from Sacramento to Stockton and received a negotiated $5,000 lump sum transfer allowance in lieu of any other moving expense benefits to which he may have been entitled under the New York Dock Conditions. Smith was of course a protected employee under New York Dock because he was displaced by the WP-SN coordination and the accompanying steel train transaction.

Approximately another year after these events, in April of 1986, Engineer Smith was reasigned to the WP engineers' extra board in Portola, CA, some 200 miles from Stockton. On May 20, 1986, Smith sought a displacement allowance under New York Dock because of this reassignment beyond 30 miles. The Organization also asks that he not be required to move more than 30 miles from Stockton in order to preserve his protective period guarantee. The basis for this latter claim is my prior award of February 14, 1986. There, in answer to Organization Question No. 10, I stated that, "Those SN trainmen who are displaced by a

transaction are not required by Section 5(b) of New York Dock to change their place of residence to preserve their full guarantee."

Discussion of this claim need not be lengthy. Although Smith was originally hired as an SN trainman, he later became a promoted engineer. As such he is now by Carrier-BLE Agreement on the WP engineers' seniority roster. The UTU processes Smith's claim with consent of the BLE and because the SN engineers' agreement has been abolished. While Smith has prior rights to SN engineers' former work as it is identified in the BLE implementing agreement, he apparently does not have sufficient seniority to hold any such prior rights SN engineers' job. Moreover, by implementing agreement he is now subject to the BLE's collective bargaining agreement with the UP.

It is apparently pursuant to the WP engineers' bargaining agreement that he was reassigned to Portola. Apparently he now has insufficient seniority to remain on the Stockton extra board and it is this that resulted in his reassignment to Portola. But in any event Smith is no longer a trainman represented by the UTU. He is now an engineer represented by the BLE and subject to their agreements. Any New York Dock rights he may have had with regard to the SN-WP coordination transaction and his consequent move to Stockton were paid for by the BLE's agreement to his acceptance of a lump sum "in lieu" payment.

No further transaction has occurred since then that led to his reassignment to Portola, which simply resulted from his lack

of relative seniority under the WP engineers' bargaining agreement. Hence Smith's claim for protective payments under New York Dock because of the transfer to Portola, or alternatively his request that he stay in Stockton and collect his prior guarantee, are both unjustified because his displacement from Stockton and his reassignment to Portola did not result from an ICC-approved transaction.

AWARDS

1. The claim of Brakeman H. W. Miller for recomputation of his test period earnings based on the twelve months preceding February 11, 1986 is denied.

2. The claim of Brakeman G. F. Jennings for recomputation of his test period earnings based on the twelve months preceding February 11, 1986 is denied.

3. The claim of Engineer W. A. Smith for calculation and payment of a monthly displacement allowance because of being displaced from Stockton and reassigned to Portola, California is denied.

Charles M. Rehmus
Referee

Dated: August 25, 1987